



BOARD OF APPEALS
Diane R. Gordon, Co-Chair
Harry Miller, Co-Chair
Bailey S. Silbert

Town of Brookline *Massachusetts*

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Patrick J. Ward, Secretary

**TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 060059**

Petitioner, Chair 5 Restaurants, LLC, applied to the Building Commissioner for permission to establish a Qdoba restaurant at 289-293 Harvard Street, with seating for 60 people. The application was denied and appeal was taken to this Board.

On September 14, 2006, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed October 26, 2006, at 7:00 p.m. in the Selectmen's Hearing Room on the sixth floor of the Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to its attorney (if any of record), to the owners of properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published October 5, 2006 and October 12, 2006, in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

NOTICE OF HEARING

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **CHAIR 5 RESTAURANTS, LLC**

Location of Premises: **289-293 HARVARD STREET**

Date of Hearing: **10/26/2006**

Time of Hearing: **7:00 p.m.**

Place of hearing: **Selectmen's Hearing Room, 6th. Floor**

A public hearing will be held for a variance and/or a special permit from

- 1) **4.01.3.a; Permitted Uses; Special Permit Required**
- 2) **4.03; Pre-Existing Special Permit Uses; Special Permit Required**
- 3) **4.07; Table of Use Regulations, Principle Use #30; Special Permit Required**
- 4) **5.09.2a; Design Review; Special Permit Required**
- 5) **6.02.1; Table of Off-Street Parking Requirements; Special Permit/Variance Required**

of the Zoning By-Law to establish restaurant of 60 seats requiring parking relief for 26 seats

at **289-293 HARVARD STREET**

Said Premise located in a **G-1.75 (CC)** district.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Board members Diane R. Gordon, Lawrence Kaplan and Enid Starr. Petitioner was represented at the hearing by Burton A. Nadler of Petrucelly & Nadler, P.C., One State Street, Suite 900, Boston, MA 02109

At the hearing, Lara Curtis, Planner of the Planning Department, distributed the Planning Board Report dated October 19, 2006. The Planning Board Report described the factual background for the petition as follows:

289-293 Harvard Street is a one-story brick building at the corner of Harvard and Green Streets in the heart of Coolidge Corner. The building currently houses a flower store (293 Harvard Street) and a McDonald's Restaurant (291 Harvard Street). The current proposal involves the vacant space to the east of the McDonald's, previously a Citizen's Bank. Primarily commercial uses surround the subject property. No parking exists on the site.

The applicant, Chair 5 Restaurants, LLC, obtained a restaurant license for 34 seats for the subject property from the Town's Board of Selectmen earlier this year; a restaurant with 34 seats would not need any additional parking due to grandfathered parking waivers. The applicant proposes to establish a Qdoba restaurant at the site, with seating for 60 people. Mr. Nadler and Gad Liwerant, an owner of Petitioner, explained that the Petitioner is locally owned, and currently operates eight restaurants in Massachusetts. Qdoba is a "fast casual" franchise restaurant concept. All food is fresh, prepared daily on the premises, and items are individually customized to the customer's order. The applicant does not expect to make any significant exterior alterations to the building, and plans to pursue Planning Board review of any signage needed for the restaurant at a later date. The applicant does expect to change one of the windows on the

corner of Harvard and Green Streets to a door and to replace the aluminum siding on the windows to improve the building's appearance.

Primary entrances to the restaurant would be along Harvard Street and at the corner of Green and Harvard Streets. A mix of seating types would be used in the restaurant, including free-standing tables, booths, and counter seating. New interior construction includes dividing walls between the front and back operations of the restaurant, and the construction of a counter and cook stations where food would be ordered and served.

The Chairperson, Ms. Gordon, asked if any members of the public wished to be heard on this matter and no individuals asked to be heard.

Lara Curtis of the Planning Department reviewed the zoning relief that was set out in the Planning Board report, as follows:

Section 4.01.3.a - Permitted Uses; Special Permit required

Section 4.03 - Pre-Existing Special Permit Uses; Special Permit required

Section 4.07 - Table of Use Regulations, Principle Use #30; Special Permit required*

Section 5.09.2a - Design Review**

Section 6.02.1 - Table of Off-Street Parking Requirements

A special permit for design review is required for any use located in the G-1.75 (CC) District or fronting on Harvard Street. All of the standards in paragraph (4) have been met and comments on the two most relevant follow:

(a) Preservation of Landscape

(b) Relation of Buildings to Environment

The proposal involves only minor exterior alterations, and works within the existing building at 289-293 Harvard Street. The proposal would provide a tenant for a currently vacant commercial space at a high pedestrian-traffic intersection.

	<u>Required/Allowed</u>	<u>Existing</u>	<u>Proposed</u>	<u>Finding</u>
Parking spaces (1 space per 5 seats)	5 (additional)	0	0	Special Permit***/Variance required

* Under **Section 4.07**, a special permit is required for any permitted use located in the G-1.75 (CC) District or fronting on Harvard Street.

** Under **Section 4.01.3**, which is applicable to this proposal, a special permit may be issued in accordance with the requirements of **Section 5.09** – Design Review.

*** Under **Section 6.02.1.b**, the Board of Appeals may waive by special permit up to six spaces for a non-residential use in a business district. Evidence to support the special permit includes the operating characteristics of the proposed use, peak parking demand in relation to the peak parking demand of other uses, need for employee parking, and availability of existing public parking and transit facilities in the area. All of these spaces may be waived by special permit.

Ms. Curtis gave the following report from the Planning Board:

The Planning Board has no objection to this proposal to establish a restaurant at 289 Harvard Street with allowed seating of 60 seats. The proposal does not involve any increase in the building's square footage, and provides for a reasonable layout within the premises. The applicant cannot provide off-street parking on site due to the lot's size and building configuration. Several public parking lots are located nearby, metered parking exists along Harvard Street, and the area is easily accessed by multiple modes of public transportation. The management can encourage employees to use methods of public transportation by providing partially subsidized T passes, and thereby limiting the impact on the employee parking supply in Coolidge Corner.

Frank Hitchcock, Senior Building Inspector, spoke on behalf of the Building Commissioner. He restated the various sections of the Zoning By-Law under which relief is needed. Mr. Hitchcock stated that the Building Department has no objections to the requested relief. He further stated that he will ensure that all State Building Code provisions are satisfied.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant special permits for **Sections 4.01.3.a, 4.03, 4.07, 5.09.2.a and 6.02.1.b** of the Zoning By Law and makes the following findings pursuant to **Section 9.05** of the zoning by-law:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.

- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. The restaurant's hours of operation shall be from 11 a.m. to 11 p.m. Sunday through Thursday, and from 11 a.m. to midnight Friday and Saturday.
2. Any and all signage and façade renovations for the restaurant shall be approved by the Planning Board, with the concept that putting a door in the building's corner archway, shown on the plans titled "Floor Plan & Equipment Schedule – Qdoba Mexican Grill – 289 Harvard Street, Brookline, MA 02446," dated June 23, 2006, and prepared by Lingle Design Group Inc., are approved.
3. The restaurant's management shall implement an employee T-pass program, where management subsidizes at least 50 percent of the cost of monthly subway and bus T-passes for all of the restaurant's employees.

4. Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

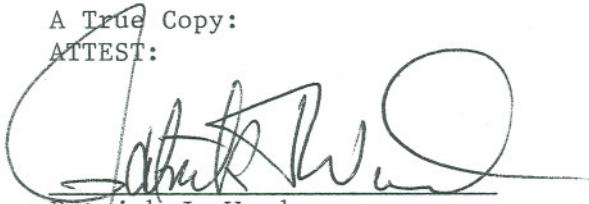
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UNANIMOUS DECISION OF THE
BOARD OF APPEALS


Diane R. Gordon, Chairman

Date of Filing: _____, 2006
November 16, 2006

A True Copy:
ATTEST:


Patrick J. Ward
Board of Appeals